

CHILI ZONING BOARD OF APPEALS
June 25, 2013

A meeting of the Chili Zoning Board was held on June 25, 2013 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Paul Bloser.

PRESENT: Adam Cummings, Robert Mulcahy, Michael Nyhan, Robert Springer, Fred Trott, James Wiesner and Chairperson Paul Bloser.

ALSO PRESENT: Michael Jones, Assistant Town Counsel; Ed Shero, Building & Plumbing Inspector

Chairperson Paul Bloser declared this to be a legally constituted meeting of the Chili Zoning Board. He explained the meeting's procedures and introduced the Board and front table. He announced the fire safety exits.

PAUL BLOSER: Tonight on the agenda there is one item held until next month and that is Application 5, so we'll not be hearing that tonight if anybody is here for 5. Signs, anybody have any problems? I saw them all.

The Board indicated they had no problems with the notification signs.

1. Application of Bruce Ashmead, owner; 1 Haverhill Drive, Churchville, New York 14428 for variance to erect a 6' high stockade fence in front setback area per plan submitted (4' allowed) at property located at 1 Haverhill Drive in R-1-12 zone.

Bruce Ashmead and Amy Ashmead were present to represent the application.

PAUL BLOSER: For the record, please state your name and address.

MR. ASHMEAD: I'm Bruce Ashmead, 1 Haverhill Drive.

PAUL BLOSER: I see you already have your fence up.

MS. ASHMEAD: Yes, we do. You want to know why, you want to know the reason why we put it up without telling you?

PAUL BLOSER: I see the dogs.

MS. ASHMEAD: That is one part.

The other part is Bruce (Ashmead)'s, um, back was really bad a couple months ago, and we didn't want to put the fence up in this heat and everything, and I had to do all of the hard labor, so we thought -- it took us over a month and a half to get everything all set.

MR. ASHMEAD: I had an MRI done two weeks ago. I saw my neurosurgeon yesterday and we were planning on back surgery for the month of July. Yesterday I found out from my neurosurgeon I do not need surgery now, but I'm still under light duty.

PAUL BLOSER: Okay. Are you planning on staining that any color?

MS. ASHMEAD: Yes.

MR. ASHMEAD: In the fall time, after it dries out, we plan on staining it.

PAUL BLOSER: You can't with pressure-treated right away. I'm --

MS. ASHMEAD: Right. We're going to stain it the color of the house.

ROBERT SPRINGER: Two dogs?

MS. ASHMEAD: Yes.

ROBERT SPRINGER: Siberian Husky?

MS. ASHMEAD: One is a Siberian. One is a hound dog. Like a Rhodesian Ridgeback.

ROBERT SPRINGER: They both like to howl?

MS. ASHMEAD: No. Actually, they don't. They don't. They're really good dogs. You can ask my neighbors. And I have statements here from my neighbors, too, two of them. One that lives on the left side and the other one that lives across the street from us.

Would you like them?

ROBERT SPRINGER: No. That's fine.

MS. ASHMEAD: They're fine with the fence and the dogs.

PAUL BLOSER: If those are letters you want to submit to keep as part of the application, we'll take them.

MS. ASHMEAD: Okay.

FRED TROTT: I notice that one part of the fence is older?

MS. ASHMEAD: Yes.

FRED TROTT: Any plans of continuing with the new style fence?

MS. ASHMEAD: Yes.

FRED TROTT: There are two different styles.

MS. ASHMEAD: Next here on my neighbor's side, on the left-hand side, we're going to replace that part. And then hopefully in the back. Yes, we would like to replace the whole thing all new.

MR. ASHMEAD: You are talking about the existing fence already up?
FRED TROTT: Yes.
PAUL BLOSER: What is there is there. You're not proposing any additional to go up now or increasing the size of this, right?
MS. ASHMEAD: No. No.
FRED TROTT: Just maybe put that as a condition.
MICHAEL JONES: Just a question. Both dogs are licensed, correct?
MS. ASHMEAD: Yes, they are.
MICHAEL JONES: Thanks very much.
Fence is secure so your dogs can't get in and out but through your house or through the gate?
MS. ASHMEAD: Yes.
MR. JONES: Thank you.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road
MS. BORGUS: Just a question.
Is there another fence cutting the yard in half as well as a perimeter fence? I can't read it from here, but --
MR. ASHMEAD: That's the only fence from the garage going to the backyard.
MS. ASHMEAD: We took that down.
MS. BORGUS: That's no longer there?
MS. ASHMEAD: Right.
MS. BORGUS: Well, it is always nice, though, to see people come in ahead of time and get the proper permits and find out what the rules are. I -- everybody has health problems, but, um, you know, everybody in Town just can't take the hoe into their own hands and do as they will. I hate to see that happen.

James Wiesner made a motion to close the Public Hearing portion of this application and Fred Trott seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: For the record, I will add that I have two letters here from neighbors from 3 Haverhill Drive and 3824 Chili Avenue, both stating they have no objections to the fence.
JAMES WIESNER: I believe the next street down on the corner they have a 6 foot fence also --
MS. ASHMEAD: Yes.
JAMES WIESNER: That we approved.
MR. ASHMEAD: That address is 2 Rachael Drive. He has the same lot that I have, driveway facing towards the side street and they do also have a 6 foot fence. Theirs is half vinyl and half wooden.
JAMES WIESNER: That's all I have.
MICHAEL NYHAN: The condition was the fence that size with the maintenance relative to damage, that it would be repaired.
PAUL BLOSER: You know what? We did -- on that property right down the street we did for the fence in that area. So I will put a condition of approval that -- if any of these panels are wind blown or damaged in any way, that they're replaced. I think we did -- I think we did within ten days.
MS. ASHMEAD: Sure.
ROBERT MULCAHY: Didn't we also require bushes?
PAUL BLOSER: I'm getting to that.
MS. ASHMEAD: Oh, and I heard that. Next year, we would like to add Arborvitaes on the fence part, by the road and everything after we will stain it.
PAUL BLOSER: That's one of the things I'm getting to. If you look at the property the next street down where they put up the vinyl fence there, we did require that, that they put evergreens up, and we wanted a 3 foot minimum to start just so it gave a little bit of blend in. You know, once you stain it, it will blend in nicer but just to have something in there, just --
MS. ASHMEAD: Yep.
PAUL BLOSER: Just spruce it up a little bit. Probably three or four, one in the corner, one in the front and two more to the side will probably be sufficient there.
MS. ASHMEAD: Sure.
PAUL BLOSER: You know, 8, 10 foot apart.
MS. ASHMEAD: Yep.
PAUL BLOSER: Okay?
MS. ASHMEAD: Yep. Can we do this next year? Or do we have --
PAUL BLOSER: I would like to see the plantings in the fall because they root better in the fall.
MS. ASHMEAD: All right.
PAUL BLOSER: You get a good root ball down and it is packed in and then do leaves or

whatever around the base for the wintertime. They will spread out nice in the spring for you. It is a good time to do it late in the fall, before frost.

MS. ASHMEAD: Yep.

PAUL BLOSER: Ed (Shero), excuse me, is there a permit required for this?

ED SHERO: Nope.

MICHAEL NYHAN: If the existing fence is going to be replaced, a condition that it be replaced with the same or similar fence and that the staining be the same color so we don't have different colors and difference fences around the area.

MS. ASHMEAD: Yes, it will.

MICHAEL NYHAN: Also, is there a timeline on the new fence, the existing fence being replaced?

MS. ASHMEAD: We're hoping we can do it next year.

MR. ASHMEAD: You're talking the whole of the old fence, all of the way to the back side of the house.

MICHAEL NYHAN: There was mention the existing fence will be replaced.

MS. ASHMEAD: Right. From Sue's side, remember, and then in the back. Yep.

PAUL BLOSER: Conditions I put down here are maintenance of fence, staining to be completed by November 15th, 2013, to match the house color and then maintained by regular restaining as needed.

Damage to any portion of the fence by wear and tear or wind damage to any portion of the fence to be repaired within ten days of incident.

Proposed section of the fence to be replaced to match new and stained to match, and then 4, condition would read trees on west and south sides minimum 3 foot tall and planted to be completed by November 30th, 2013. That should give you plenty of time for that. Okay?

MS. ASHMEAD: Uh-huh.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Adam Cummings seconded the motion. The Board all voted yes on the motion.

Robert Mulcahy made a motion to approve the application with the following conditions, and James Wiesner seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Maintenance of fence- staining of deck to be completed by November 15, 2013 to match house color.
2. Damage by wear and tear or wind damage to any portion of fence to be repaired with ten days of incident.
3. Older sections of fence to be replaced to match new, and stained to match.
4. Addition of at least four evergreen trees on north and west sides of fence with a minimum height of 3 feet at time of planting to be planted by November 30, 2013.

The following finding of fact was cited:

1. The requested variance is not significant in nature and will have no negative impact on neighboring properties.
2. Application of William Jones, 26 Bellmawr Drive, Rochester, New York 14624 for variance to park a 35' long recreational vehicle in driveway (28' allowed) at property located at 26 Bellmawr Drive in R-1-15 zone.

William Jones and Jeanine Jones were present to represent the application.

JAMES WIESNER: I will recuse myself from this application.

PAUL BLOSER: Okay.

MR. JONES: Good evening.

PAUL BLOSER: For the record, would you state your name?

MR. JONES: William Jones.

MS. JONES: Jeanine Jones.

PAUL BLOSER: Your address?

MR. JONES: 26 Bellmawr Drive.

PAUL BLOSER: This is pretty cut and dry. You have a camper out there. What -- is it there year round?

MR. JONES: No.

PAUL BLOSER: You storing it there?

MR. JONES: No. After November 1st through April 1st we have a place in Brockport we

have that we can store it.

PAUL BLOSER: Where you're having it stored?

MR. JONES: Yes.

PAUL BLOSER: Okay. So give me the dates of when you would have it on site here.

MR. JONES: From April 1st through November 1st or it could be shorter than that. That would be the longest. More than likely May through October. I also have some signatures from some neighbors not objecting to having it in my driveway.

PAUL BLOSER: Is that a copy for the Board?

MR. JONES: Yes. How many copies would you like?

PAUL BLOSER: I just need one for the file.

MR. JONES: Would you like this now?

PAUL BLOSER: Please.

Mr. Jones, is there room on the side of your driveway or house to back that in?

MR. JONES: Right now it's grass, so the weight of the trailer wouldn't allow that.

PAUL BLOSER: Our biggest concern is 28 foot is our allocation for the Town. That's our code. I understand you're looking for relief on the code. Pretty much to date -- I'm not voting for the Board here, but pretty much to date we have denied any of these on the extra length in a residential neighborhood. So I -- I don't know how the outcome is going to go. It's up to the Board to discuss it.

I'm looking at the signatures. You have neighbors directly to your south and north and directly across the street of you, so they're flanking neighbors. That's important to me to know that they're in agreement with it.

But we look at once this is tied to the property, it's always there. If I allow --

MR. JONES: Did you happen to look at the pictures that --

PAUL BLOSER: I did. I did drive by the business. I have been over there and looked at both angles, approached from both sides to see. I mean it's tucked in.

It is just, you know -- that's why you're here, to discuss it. But it is good to have that, if anybody wants to see -- all of the immediate neighbors are there.

MS. JONES: Also we go camping quite a bit during the summer.

PAUL BLOSER: And it is not there at that point.

MS. JONES: And to have it stored and having to keep pulling it back in and out to load it and whatever, would be a problem for us. That's why, you know, once camping season is over, it's out of there, it's stored.

MR. JONES: I have a question. If it was possible to go like partly back next to the garage, would that help?

PAUL BLOSER: Um --

MR. JONES: Well, I mean it is still over 28 feet.

PAUL BLOSER: It is still over 25 feet.

MR. JONES: 28 feet.

PAUL BLOSER: The code calls for --

MR. JONES: 28 foot.

PAUL BLOSER: 28 foot. 28 foot.

Parked in the driveway. It can be parked on the side or in the back as long as we're within setbacks and not encroaching into any -- what is the word I'm looking for?

ADAM CUMMINGS: Setbacks?

FRED TROTT: Side.

PAUL BLOSER: I lost it.

25 foot -- 28 foot in the driveway. That is the code.

MICHAEL NYHAN: How frequently do you use this camper, does it leave the property?

MR. JONES: Probably two to three times a month during the summer.

MICHAEL NYHAN: How long have you normally gone for?

MR. JONES: Five days. Five days to a week.

MS. JONES: To ten days.

MICHAEL NYHAN: Have you looked at any other means for storing this?

MS. JONES: Pardon?

MICHAEL NYHAN: Have you explored any other means for storing this?

MS. JONES: Well, not during the summer. It would be just too difficult to. And, you know, to -- to find someplace that would allow that, you know, to store it and pull it off and come back and store it and pull it off.

MR. JONES: We were looking at like a seasonal site, but we go a lot of different places camping. Each place is different. We might go out of State. We might go up to Henderson Harbor or things like that. So to have a seasonal site, would -- it's not what we're looking at.

MICHAEL NYHAN: Have you looked at any other options within your own -- on your property there relative to along the side?

MR. JONES: No, but we're thinking about widening our driveway and, you know, probably would make it a concrete if it would help to -- to go backwards. But I just didn't think that would make a difference, myself. But I'm not an expert on codes, so.

So if it was back -- if part of it was back behind the front of the garage, that would be all right?

MICHAEL NYHAN: I believe the code says 28 foot beyond the front setback of the property.

PAUL BLOSER: No. It is the limit of the vehicle. The limit of the vehicle, period.

ADAM CUMMINGS: Anywhere.

MR. JONES: Anywhere. So even if I happened to want to -- which I'm not going to, store it during the winter, it would have to be beyond the front setback, but it could only be 28 feet? That is not what I'm doing. That is the way I read the code. I could be wrong.

PAUL BLOSER: The code says you can't have the vehicle longer than 28 feet, period.

MR. JONES: So when you brought up the setback on the side of the garage, I -- I thought --

PAUL BLOSER: I'm just looking at --

MR. JONES: Is that an option?

PAUL BLOSER: -- to get it out of the driveway so it is not sitting in front of the house. I'm looking for an alternative spot that is an alternative. Okay?

MR. JONES: Okay.

PAUL BLOSER: It would still need a variance to park it there, okay, because of the length. I'm just looking to get it out of the driveway so -- to keep the driveways clean.

I -- you know, I noticed around the corner from you, just down a little bit, there is a driveway, and I have asked the Town to look at it. They have a boat and a trailer parked in the front yard. You know, forward of the house. But it's in the side yard. You know, it's a big town. It's a lot to enforce. It's a common problem. But those are, you know, 18 foot, maybe 20 foot long. So it's a little -- little different. So they're going to have to look to see if they're in any kind of violation for temporary or permanent storage. But back to yours.

ROBERT SPRINGER: Do you still have the boat and trailer?

MS. JONES: We don't have a boat.

PAUL BLOSER: No. That was another yard near them.

ROBERT SPRINGER: No, no.

MR. JONES: That was a previous owner that had a boat.

ROBERT SPRINGER: Okay.

PAUL BLOSER: Nothing else there that I saw, unless it is in the garage.

FRED TROTT: Are you able to park all of the vehicles in your driveway?

MR. JONES: Yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: So far I haven't heard anything different about this application than every other one you have turned down. You have -- people buy these huge machines, trailers, whatever you call them, RVs, they should check the code. If it doesn't fit, you don't buy it. It's as easy as that. It's inconvenient for these people to move it, to reload it or whatever, well, then that's the name of a game. When you live in a subdivision and you buy an RV, that is your problem. You should have thought of that ahead of time. It's a self-created hardship if they bought something that doesn't fit the code, and I haven't heard whether this is a new -- a new trailer, fifth wheel or if they have had this for a while. I don't know what they did about it before, if they had it before or if they just bought it. Again, they should check the code before they bought what they did. A self-imposed hardship is an automatic no as I read the rules for this Committee.

Thank you.

Robert Springer made a motion to close the Public Hearing portion of this application and Michael Nyhan seconded the motion. All voting Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

ROBERT MULCAHY: We have a gentleman we turned down --

PAUL BLOSER: We had several.

ROBERT MULCAHY: We're going to open Pandora's box.

PAUL BLOSER: Until there is relief on the code and it is re-evaluated, I'm -- I have my opinion. The code is the code. We have been consistent in not allowing it at this point. If the code is revised, if it will be, um --

FRED TROTT: In the same respect, not to be argumentative, but I look at the American Legion with that sign, their billboard. That was code. Code definitely (indiscernible) we turned down Walgreens and then we let them -- we changed our mind on that. I mean, I know what you're saying and I have seen the other ones and they had a much smaller driveway and the RV was all of the driveway.

PAUL BLOSER: Yes.

FRED TROTT: They got plenty of room. They had three cars in the driveway and they still had room. You know, I would make that be my only thing, my condition that no vehicles parked on the side of the road. If they can handle that. I mean, it's not an eyesore. I mean, I just -- I don't -- I personally disagree with the code, but I see it as -- I agree with it when you have an RV that is as big as the driveway or, you know, other people have the boat and the RV and everything else. You know, if you're saying the code is the code, we have broken that rule every time.

PAUL BLOSER: That's what we're here for.

FRED TROTT: That's what we're here for. But then to say we're not here for this --

ADAM CUMMINGS: But we have to remember none of them are precedence before. We happened to do that before. It's on the merit of this application only. So let's keep that in mind.

FRED TROTT: Yes. That is my point in a roundabout way.

ROBERT SPRINGER: I'm hard-pressed to see the difference between 28 and 35 when you drive through there. If he cut off 7 foot of that, I wouldn't know the difference in that large driveway.

FRED TROTT: Yeah. I mean, like I said, if it was a small driveway, like the other ones I have seen, it's like, you know, they have to move out of the way just to park their cars. And he has got a huge driveway. I don't see it.

PAUL BLOSER: Um, does this have an extension, side extension that goes out?

MR. JONES: Yes.

MS. JONES: But we don't put them out unless we're loading stuff in the trailer. They're not out when it's in the driveway. Unless we have to get in it, in that specific area, we don't keep them out.

ADAM CUMMINGS: So your storage that is in Brockport, I think you said, that's during the off season?

MR. JONES: Oh, yes.

ADAM CUMMINGS: Longer term storage so it is not like you can park it there, bring it to your house and load it up and go?

MR. JONES: Right. It will be like a winter storage. It's like a -- like a narrow thing where they store other things, too, so it is like once it is in there, it's in there.

FRED TROTT: Was there a complaint that brought this to us?

ADAM CUMMINGS: Probably just a drive-by.

MR. JONES: No. I applied for it.

FRED TROTT: So you applied for it?

MS. JONES: Uh-huh.

FRED TROTT: So ironically enough, if the neighbors don't seem to be against it, if he had not said anything --

ADAM CUMMINGS: This is completely different than the first application.

MS. JONES: We even got the neighbors behind us, too, that are behind us on either side of us, across the street from us, a little ways up the street from us.

PAUL BLOSER: I will write some conditions on this.

Conditions I would put on will be no cars, trucks or other type of trailers to be street parked.

No other types of trailers, boats, campers of any type to be parked in the yard or driveway.

No open extensions of any awnings, pull-out rooms, bed racks, tenant extensions, satellite dishes, et cetera, allowed.

And for parking on site from April 1st to November 1st only. If you're loading and unloading, the extension, okay, but for day-to-day, it has to be closed up, contained up.

MR. JONES: Okay.

PAUL BLOSER: That would be the conditions for that.

Would the Board like to see anything else on this?

ADAM CUMMINGS: Taking these owners out of this that have an RV, the next property owner that doesn't have an RV, should we reword the restriction to be only if there is a recreational vehicle of 35 feet or greater than 28 feet on the property be restricted? Because the way that is worded, I don't -- maybe that is to Mike (Jones). I -- are we restricting them to no --

PAUL BLOSER: Yes.

ADAM CUMMINGS: -- to no other campers --

PAUL BLOSER: No other toys.

ADAM CUMMINGS: -- other things out there? So even if the next owner doesn't have a recreational vehicle here, they're not allowed to have those on the property?

MICHAEL JONES: Um, yes, it -- the wording sounds like that is exactly what you're doing. And I'm not sure that that would be recommended.

ADAM CUMMINGS: I agree.

PAUL BLOSER: Yeah.

FRED TROTT: So could you have it as when the trailer is there --

MICHAEL JONES: No, I think you --

FRED TROTT: So no other --

MICHAEL JONES: I would just suggest that you reword it in the event of a trailer exceeding the threshold, then no other recreational vehicles would be stored on the property.

PAUL BLOSER: Okay.

ADAM CUMMINGS: That would go along with the off -- or on-street parking restriction, as well.

PAUL BLOSER: And I would -- I will make sure that there --

ADAM CUMMINGS: Okay.

PAUL BLOSER: -- when a trailer or vehicle over the code allowed is parked on the property, no other type of trailer or recreational vehicle to be allowed on the property or parked in the driveway.

ADAM CUMMINGS: We want to restrict it to 35 feet.

PAUL BLOSER: Over the code allowed. So if the code is 28 foot --

ADAM CUMMINGS: That's true. This application is only 35.

PAUL BLOSER: If it changes, the code ever changes to 35, then the same thing, they can't get anything bigger unless you want me to specifically say it is 35 foot.

FRED TROTT: I agree with what you got.

PAUL BLOSER: I rather do it.

FRED TROTT: Because say, for example, they measured wrong and it is 35 1/2 inches.

PAUL BLOSER: I can put no trailer to exceed --

ADAM CUMMINGS: I think the application says 35, so we'll just leave it as that.

PAUL BLOSER: Okay. We'll leave it as that. If they come home with a 60 foot recreational vehicle, it -- that's --

ADAM CUMMINGS: We'll have a problem.

PAUL BLOSER: That is why I was saying that.

FRED TROTT: You can't go much bigger than 35 foot.

PAUL BLOSER: What is that?

FRED TROTT: I don't think you can go much bigger than 35 foot.

PAUL BLOSER: A bus. Over the road.

ADAM CUMMINGS: No. That is good.

PAUL BLOSER: Okay.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Fred Trott seconded the motion. The Board all voted yes on the motion.

Fred Trott made a motion to approve the application with the following conditions, and Adam Cummings seconded the motion. The vote on the motion was 5 no to 2 yes (Robert Springer, Fred Trott).

DECISION: Denied by a vote of 4 to 2 (Robert Springer, Fred Trott) with 1 abstention (James Wiesner) the above described application. The applicant seeks to park a recreational vehicle that is longer than 28 feet in his front driveway seasonally for six months each year. The following findings of fact are cited as reasons for denial:

1. There is no practical alternative to achieve the benefit sought of parking a 35 foot long recreational vehicle because the code only permits such vehicle up to 28 feet in length.
2. The size and length of the recreational vehicle is disproportionately large to the size of the homes and lots in the neighborhood, and the proposed placement of the vehicle fails to mitigate, and in fact, accentuates the visual impact in the neighborhood.
3. The variance is 7 feet, or 25% greater than permitted by code. The request, therefore, is substantial.
4. The recreational vehicle in question is new, and itself not visually displeasing; however, it's size is out of place with respect to neighborhood homes and lots.
5. The difficulty is entirely self created. The applicant ignored the code and parked the vehicle without first making a variance request.

On the balance, the Board finds that the substantial nature of the request, and the aesthetic impact to the neighborhood requires that the variance must be denied.

PAUL BLOSER: That is denied at this point.

MS. JONES: Can we ask why those -- that you are denying it -- are denying it? If we're willing to go by all of the stipulations?

ADAM CUMMINGS: You're saying the conditions?

MS. JONES: Pardon?

ADAM CUMMINGS: You're saying the conditions we imposed?

MS. JONES: The conditions you imposed we're willing to agree to all those conditions. Why? And we're not parking any vehicles on the road. Um, and there is more than enough room and all our neighbors have said they're not opposed to it. It's not an obstruction. It's not like the thing is old and rusted. Why?

PAUL BLOSER: I understand what you're saying.

MS. JONES: But I guess my other thought is, yes, we did come and apply for this, and the opportunity presented itself, you know, to purchase this. And, you know, now what are we supposed to do? I understand what the code is, but what are we supposed to do? I mean, there isn't really -- we have explored places and opportunities to pull this off, go try to get it, bring it back to park it. It -- it just doesn't work. And we're willing to -- it's probably not even going to be in the driveway until November 1st. It's probably going to go off site by October 1st.

And eventually within a year, hopefully, we're -- it's going to be gone all winter and we're

going to be using it to travel. We have plans to go across country or whatever else. And I mean this was an opportunity and a deal we could afford and we really couldn't pass up. And now -- I don't know -- I understand what the code is, or whatever, but we have lived in Chili for 16 years. We have been good citizens. We have maintained our property. Now what are we supposed to do? Sell it? I mean, I'm sorry, but I'm --

PAUL BLOSER: I understand what you're saying. We have a criteria that we look at, um, when I'm making these decisions, what we call an area use. And what we look at is can the requested -- there are five points that we look at.

Can the requested variance be mitigated by reasonable means? Reasonable as, you know, we have to see financial hardships why it can't go someplace.

Is there someplace else? Yes. It could be stored someplace else. You have another storage place in the long-term. You can bring it back and forth. It's an inconvenience.

MS. JONES: We can't bring it back and forth from this place. It's not -- once it goes in and -- we're not even backing it in. The person that we're storing it with, they're backing it in because that's how tight the spot is, and once it goes in, it has got to stay because there are other things that go in there. So this is not someplace we can pull it in and -- in and out of. And it -- it would be. I mean, in all told, we -- we have looked around and stuff. And I mean --

PAUL BLOSER: Well, the other things we look at is will the requested variance create an undesirable change in the character of the neighborhood or nearby properties. We also look at is the requested variance substantial in nature or character. Will it have any adverse physical or environmental impacts. The biggest one is -- is the alleged difficulty resulting in the requested variance a self-created hardship, which it is.

And we weigh those out.

MS. JONES: I mean, short of -- I mean, I'm not trying to be whatever. We're going to have to end up selling our house. I mean, seriously, I can't -- there is no other options. I mean, to take this anywhere and get it out so we can take it camping and stuff. There are just -- we spent a lot of time finding someplace we could store it for the winter, and, you know, as I said, we -- we immediately -- right after we got it, we came and applied for the variance. We weren't trying to hide anything, whatever. But this was an opportunity that presented itself and this is what we do. We camp. And we plan on taking this across country. We plan on going away probably for the winters and stuff.

So I mean...

ADAM CUMMINGS: To jump in real quick, our role as the Zoning Board is not unique to just you. We're thinking of this parcel forever, and that's why we're not making the decision personally. We're using that balancing test for those five criteria.

PAUL BLOSER: For the long run.

ADAM CUMMINGS: Automatically that self-created hardship, you automatically have a "yes" for one of the five because every variance in here is a self-created hardship. Once we balance it with the other ones making a substantial change in the neighborhood, it's a residential neighborhood, there isn't a recreational vehicle in all of them, so it is a substantial change to the neighborhood.

MS. JONES: What do you mean there is not a --

ADAM CUMMINGS: Not an entire street. There are other ones, and this --

PAUL BLOSER: Of that size.

ADAM CUMMINGS: This is specifically for the oversized one -- let me finish real quick. Now our next part of the test is substantial in terms of numbers or reasonable means.

You even documented that it's 7 feet over the 28 foot requirement. That's 20 percent, if you want to put a number to it. 20 percent in a variance to me can be viewed as -- as a significant variance. That's the balancing test we use.

MR. JONES: The 7 foot is the kingpin that goes over a fifth wheel.

ADAM CUMMINGS: I agree. This is putting it numerically to justify it is substantial. You asked how we came about our decision and I'm explaining how I came about it. So when I balance those out, of those five criteria, that is how I come up with it.

MS. JONES: But there is not -- you're saying there is no other recreation --

ADAM CUMMINGS: Of this size. You don't have an entire street -- you're not supposed to. The way our code is written there, the next option for you, my recommendation, would be to go to your Town Supervisor and write him a letter asking him for --

MS. JONES: There used to be a motor home in the neighborhood.

ADAM CUMMINGS: I'm not -- there could be 50 of them.

MICHAEL JONES: Mr. Chairman, can I jump in for a second?

ADAM CUMMINGS: Certainly, Michael (Jones).

MICHAEL JONES: I just want to advise the Board to maybe cease the discussion. The Board has already made a vote. You're not permitted to have a revote. There is no further action this Board is legally allowed to do. You made your determination. You can't -- you're not allowed to change it now.

The discussion at this point doesn't serve a purpose, and I would legally advise the Board not to engage in discussion further. I'm not unsympathetic to the applicant, but I would advise it would be a good idea to talk to an attorney to get advice. I'm not permitted to give you advice and this Board is not permitted to give you advice. So there really is no point to further discussion now that a vote has been taken and I would rather my Board not continue in this discussion. It is not advisable from a legal standpoint.

MR. JONES: May I ask a question to see if I can ask them a question?

MICHAEL JONES: I -- I have said -- I don't think I minced my words. I don't think discussion is conducive and I don't want this Board to continue with this discussion.

PAUL BLOSER: Once we take a vote, that's it. We can't go back.

MR. JONES: Okay. Well, how would I get my answer -- my -- my -- a question to my answer -- or answer to my question? My question was, have you ever given a variance to a -- a motor vehicle or -- an RV over 28 foot to be in the driveway?

PAUL BLOSER: Not while I have been on the Board.

MR. JONES: Never?

PAUL BLOSER: Not while I have been on the Board.

MR. JONES: All of the ones in Chili are there illegally?

PAUL BLOSER: I have not issued one as long as I have sat in my chair on this Board. I have been here ten years. So.

We'll be sending a letter out to you with our findings and the Board's decision.

MR. JONES: Okay.

PAUL BLOSER: Thank you for your time.

3. Application of Wegmans Food Markets, owner; P.O. Box 30844, Rochester, New York 14603 for variance to erect 12 permanent banners on light poles per plan submitted at property located at 3175 Chili Avenue in GB zone.

Caitlyn Piatkowski was present to represent the application.

MS. PIATKOWSKI: Good evening. How are you? My name is Caitlyn Piatkowski with Wegmans Food Markets Site Development Team, and I'm here representing our Chili Paul store on 3175 Chili Ave. We are looking to have 12 of the veggie banners that are shown on the board there hung on the light poles. It is becoming a -- a store wide thing to have these banners hung, and so we wanted to implement them throughout the older stores here in Rochester and elsewhere.

Um, so we are asking to be able to hang banners on the six poles that are in the interior of the parking lot and then the three poles that are on either entrance.

PAUL BLOSER: Question I have got on these, um, are they going to change in sizes or are they going to change with season?

MS. PIATKOWSKI: Nope. Well, this -- this is the design, the veggies, as they are, and they are 24 inches by 55 inches, and that has been the standard size that we have been using.

PAUL BLOSER: Are they going to change seasonally based on the type of produce coming out?

MS. PIATKOWSKI: No. The five that are listed we just will have them scattered throughout the site, so it's more of like a -- a lane, um, identifier. So I'm in the corn lane, parked in the corn lane kind of thing, so they would stay veggies.

PAUL BLOSER: So they're not going to -- you're not going to be doing like a Thanksgiving theme on them or Christmas theme or holiday theme?

MS. PIATKOWSKI: Not that I know of currently, but this is what has been for the past two years, so.

PAUL BLOSER: When you state you're only doing older stores with it --

MS. PIATKOWSKI: Well, the newer stores in the south have them already, and Danny (Wegmans) wanted them to continue throughout the rest of the chain, so we're implementing them here, as well. And we already have them at Pittsford and the new East Avenue store and Eastway, Penfield and we're also seeking variances in Greece.

PAUL BLOSER: How high off the ground are these?

MS. PIATKOWSKI: Um, they're quite high.

I think they're -- they're -- they're quite high up. I would have to say 10 or 12 feet.

PAUL BLOSER: What material are they constructed of?

MS. PIATKOWSKI: They're vinyl, 15 ounce vinyl.

PAUL BLOSER: You're doing regular maintenance on them if they get windblown?

MS. PIATKOWSKI: Yep.

FRED TROTT: So we're looking at a variance to the sign law for 12 more signs in one parcel?

PAUL BLOSER: Basically, yes.

FRED TROTT: For the purpose of people not knowing they're in Wegmans?

MS. PIATKOWSKI: It's really just to add color to the parking lot.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: This is one of the dumbest things I have seen come before this Board, the dumbest. We don't need more color in a parking lot. I cannot image the insanity of even bringing this before this Board.

I have always equated good taste with Wegmans and this -- they have missed the mark this time. This is tacky. Absolutely tacky. If you ever even thought about doing this, you're going to have every -- every plaza in the Town, in here, wanting banners on every light pole. You won't see the end of it. You won't see the end of it.

These banners, in case you haven't noticed, are 55 inches high. That's close -- I mean --

that's a huge banner. And -- and I just -- and she says they're putting them in the south. In the middle of a snowstorm, we're going to be looking at broccoli and corn in the middle of a parking lot?

This is bad. This is bad advertising, bad for the Town, and I have a hard time believing that some of these towns like Perinton have allowed this. If they have, then they have lost their minds, too.

It creates a physical impact that is not what we want in Chili. We -- we adhere to our sign code very strongly here. It has -- it's not new, and I don't care if other towns, East Avenue or Pittsford or wherever they are doing it, not here. Fine. Do it there if they want it. We don't need it here.

This is an older store to begin with. It won't fit. Maybe it fits with the newer store and they don't care but not here.

In their paperwork that I read today they admit it's a self-created hardship. That's your "no" right there. Right there.

And in the south maybe they want to see corn and -- and what is it?

FRED TROTT: Eggplant.

MS. BORGUS: Eggplant and peas and whatever else, carrots, in their parking lot all winter. I don't want to see that in the middle of a snowstorm. This is Rochester.

This is a very, very bad idea. And this Board -- they can't vote yes. You cannot vote yes for this because on their own paperwork they admit it's a self-created hardship.

Robert Springer made a motion to close the Public Hearing portion of this application and Robert Mulcahy seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

MICHAEL NYHAN: So they could change the sign at any time they want and put anything on it once it is approved; is that correct?

PAUL BLOSER: Yes.

MICHAEL NYHAN: Sale items, store hours?

PAUL BLOSER: Once -- once we allow a banner to go up, it's open season basically.

And that was one of the questions I posed, is are they changing every 30 days based on the produce of the season, you know, strawberries versus corn on the cob is coming out versus squash versus happy holidays?

MICHAEL NYHAN: Right.

PAUL BLOSER: And our answer is, that is it, at this point.

MICHAEL NYHAN: The answer is we don't know.

JAMES WIESNER: Don't have any control.

PAUL BLOSER: In the future, right.

FRED TROTT: Broccoli would make me feel nice in the wintertime, give you that summertime feel. (Laughter.)

MICHAEL NYHAN: This opens the door to whatever you want on the light pole, whether --

PAUL BLOSER: Well, it opens it up to Target next door wanting to do it then.

MICHAEL NYHAN: And I'm not concerned whether they're veggies or not. I'm just more concerned with sale pricing, store hours. You can put anything you want on there.

ADAM CUMMINGS: Or just having 12 of them. Because even the entry way, the -- the entryway you have shared tenants.

PAUL BLOSER: Well, that -- Target is going to be -- Target would be not having them and you would have one side with and one without. You don't have a balance there.

FRED TROTT: The AT&T store may want to have cell phones up there. Just being the fly in the ointment.

PAUL BLOSER: That's why we're here, to discuss it.

MICHAEL NYHAN: That's my only comment that I -- that there would be no way to control that.

ADAM CUMMINGS: Reading the code, they can put banners up.

ROBERT MULCAHY: Only for 30 days.

ADAM CUMMINGS: Twice a year.

ROBERT MULCAHY: 30 days.

ADAM CUMMINGS: What we're looking at is permanent ones.

PAUL BLOSER: That is why they're here.

FRED TROTT: Within a second, The Fathers House will be here.

ROBERT MULCAHY: Everybody would be here.

PAUL BLOSER: Well, again, we're looking at a specific application. We're not looking at the others. We're looking at this one.

Are there any conditions of approval you would want to put on here?

ADAM CUMMINGS: If we wanted to minimize it, maybe offer it up to minimize it from 12 to whatever the main parking lot is, if they were using them as markers, in addition to the numbers of light poles to identify vehicles. Just want to throw that one out, if we wanted to...

MICHAEL NYHAN: I guess I just have one other question on the code. You know, this particular section of the code, it's a banner advertising a special event. So would they be

considered a special event advertising?

PAUL BLOSER: No.

ROBERT MULCAHY: 30 days.

MICHAEL NYHAN: The banner.

PAUL BLOSER: This is a permanent sign --

ADAM CUMMINGS: This is a permanent sign.

PAUL BLOSER: -- is what it would be.

ADAM CUMMINGS: Not only being permanent.

MICHAEL NYHAN: Okay.

PAUL BLOSER: And it pretty much hits every light pole they have got other than over -- I believe that's your employee parking over to the far east?

MS. PIATKOWSKI: Yes.

ADAM CUMMINGS: So what I'm offering up is the six that are in the main parking lot and not the six that are on the entrance ways. Just throwing it out there.

But the application is at 12.

PAUL BLOSER: Is there one per pole or is it two per pole?

MS. PIATKOWSKI: One per pole.

JAMES WIESNER: I don't see where it really changes a lot whether it is 2 or 4 or 6 or 8 or 10 or 12.

ADAM CUMMINGS: I agree.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Fred Trott seconded the motion. The Board all voted yes on the motion.

Adam Cummings made a motion to approve the application with no conditions, and Robert Springer seconded the motion. All Board members were not in favor of the motion.

DECISION: Unanimously denied by a vote of 7 the above described application. The applicant seeks to erect 12 permanent two sided banners (24" x 55") on 12 parking lot lamp posts. The following findings of fact are cited as reasons for denial:

1. Applicant already has a variance in place for additional signage already exceeding the code limit. This new request would add an additional 220 square feet of sign space to the property.
2. There is no practical alternative to achieve the benefit sought.
3. The additional square footage in size and length of the banners is disproportionately large to the size of the similar lots in the neighborhood. In addition, there was no guarantee from the applicant of future intended use and or design changes for the banners.
4. The request, therefore, is substantial in relation to size and quantity. The banners as presented are not visually displeasing; however, their size and use is out of place with respect to neighborhood businesses and lots.
5. The difficulty is entirely self created.

On the balance, the Board finds that the substantial nature of the request, and the aesthetic impact to the neighborhood requires that the variance must be denied.

4. Application of CBL, LLC, owner; 2070 Lyell Avenue, Rochester, New York 14606 for variance to erect proposed minor motor vehicle service station 37' from front lot line (75' required) at property located at 3209 in GB zone.

Brody Smith, Robert Fitzgerald and Bob Fallone were present to represent the application.

MR. FITZGERALD: Good evening. My name is Rob Fitzgerald, Project Engineer with Razak Associates. I want to touch a little bit on why we're asking for this variance and kind of how we got here. If I could approach the Board.

Everybody is probably familiar with this project, or at least this property. We have Kwik Fill on the south side of Chili Ave -- Kwik Fill to our west, Town & Country to our east. It's an old vacant CMU two-story block building with a sea of asphalt in front of it. Has been vacant for probably ten years.

What we're looking to do is to propose a new use which is Mavis Tire. They mostly do tire sale and repair. With that, too, of course you do inspections and whatnot.

What the setback does, what we're looking at doing is sliding this building approximately 25 feet forward towards the road. That will open up the rear so we can have parking in the rear, so essentially we lose this sea of asphalt. We're still back further than the Kwik Fill to our west.

We have been working on this project with the Planning Board. We have received preliminary and final approval of this plan, contingent upon this ZBA application. We originally tried to reuse the existing structure. The Board did not believe that was favorable, the best suited reuse, if you will, for this site. So we have -- we would be demoing the entire building and reorientate it so it is now deeper than it is wider.

The front of the building, this is the front of the building (indicating). That is what you would see from the Chili Ave. side.

So again, we're taking a two-story building, reducing that to a one-story building, a nice brick facade. It has split face knee wall, gabled roof, some dormers, so it's quite an enhancement to what is there now.

Um, some other reasons we can't slide this building back further, we do have a sewer easement as well as a sewer line right behind us, and, of course, we can't relocate that.

This also gives us nice circulation because there is additional parking -- well, now all of the parking will be to the rear of the building.

With that, I'm going to turn it over to Brody (Smith) who can get into more of the specifics of the actual setback itself.

MR. SMITH: Thank you for giving us the opportunity to present. My name is Brody Smith. I'm an attorney with Bond, Schoeneck & King, and we represent CBL, LLC, the applicant for this project.

Um, I will go through the five factors quickly because I know you have a full agenda, but please don't hesitate to stop me if you want to talk about one in length or if you have questions.

We're asking for an area variance. The -- the requirement pursuant to the zoning under Section 500-59(C)4 requires a 75 foot front yard setback. That is the setback requirement that applies to certain highways.

The basic zoning in GB would only be a 60 foot setback, but for that -- that enhancement that applies to Chili Avenue.

This area variance should be granted where the benefit to the applicant when the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or the community.

Um, contrary, you know, to some of the things that might have been said, that doesn't mean if one factor or two factors are -- aren't met, that that somehow overwhelms your weighing function. We have believe that on balance this is going to be very helpful to the character of the neighborhood and a benefit to the community. Beginning with the character issue, whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting this variance, we believe the character of the neighborhood will be improved because an old and disused building will be removed and an attractive building which is described by our engineer will be replaced.

In addition to the condition of the building, more importantly, we believe the design is more beneficial to the character of the neighborhood in terms of the quality of the building and the attractiveness, the orientation of the building, and it -- it is difficult to deny it's not a major upgrade from what is there now.

Um, I conducted a survey of businesses in the area on Chili Avenue between the intersections of Old Scottsville Chili Road and Paul Road and identified 12 businesses that also do not have the 75 yard setback. And there is probably many more. The vast majority probably are, but I just took measurements of the ones that were obviously a lot closer.

We're proposing to be 37 feet from the right-of-way. And so these buildings were all within 5 feet plus or minus of that. Valvoline, the Bank of Castile, Canandaigua Bank, Chili Liquor Store, Pizza Hut, Wendy's.

Also in that same stretch of road there were a -- numbers of buildings that were quite a bit closer than -- than our range that I just identified including the Baptist Church, Pontillo's, the 3183 building, which includes the Hair Court and the dentist office, Creation Salons and the Kwik Fill immediately next door.

So if this -- if we were to redevelop this site and the building was 75 feet off of the right-of-way, that would be the odd duck. That would be the building that would be out of character with the neighborhood. The variance that we're requesting would be in better keeping with the neighborhood.

As I mentioned before, the neighbor directly, the Kwik Fill is only 31 feet from the right-of-way. That is actually to the building. If you look to the gas pumps and the island, that's a lot closer. That is more like 15 feet from the right-of-way.

The existing building also is not 75 feet back from the right-of-way. The existing building is only 63 feet. So, um, the initial plan was to try to build within that same footprint, but that takes me to the second factor, whether the benefit sought by the applicant could be achieved in some method feasible for the applicant to pursue other than the area variance. The answer to that is no.

The applicant can't move the building any further back from the road due to the requirements of the Planning Board. Our initial -- our initial application actually did have it much further back from the road, but the Planning Board felt from the point of view of community planning and the interest of the -- the core of the Town, being more walkable and having the buildings further front and parking behind, they asked us to re-orient the building.

We didn't disagree with their observations. We conformed to those requests, and we think it -- we think it, you know, through that collaboration it's a better -- a better design has been put forward and we would ask for your support through this variance.

Um, the -- as was said before, the -- the parking would be in the back. There would be landscaping in the front. The -- the actual, um, storefront where people would walk in would be in the back next to the parking so you would just have an attractive facade and landscaping towards the front which is what you would see from the sidewalk, which is a more attractive and beneficial design than having a lot of parking right there.

Um, we don't believe that this requested variance is substantial. It is true, we're asking for 30 -- 30 feet -- 38 feet from the code requirement, but given the depth of the lot and the scale of most of the development on Chili Avenue and the consistency with which every -- you know, the -- the distance for every single business in -- in the area, it seems taking that into account, this isn't all that substantial. Um, also, the -- another way to look at it, is this -- the requested variance wouldn't be substantial or wouldn't even need a variance if it was a dwelling under 500-64 which allows the Board to take into account the relative closeness of adjacent lots to -- to -- to the right-of-way in order to calculate the front yard setback. If this was a dwelling, we wouldn't even need a variance and that is because the neighboring property is closer to the road than we are and we're asking for less than half back to the code requirement. If we look at it that way, it is particularly not very substantial.

It's beyond question that the proposed variance will not have any adverse effect or impact on the physical or environmental conditions in the neighborhood by virtue of it being a little bit closer. There is certainly no environmental downside to it. There is a well thought out site plan with adequate space for snow storage and everything else. In that regard it was covered by the site plan process.

The alleged difficulty is not self-created. As I alluded to before, this requirement to bring it closer to the road was not our idea, though, it -- it doesn't mean it's not a -- it's not a good idea. There is no other way to, um, get this building further back.

As we mentioned before, you can see the easements on the drawings. So there is no way to push this building any further back.

To deny the variance would be to create such a small building envelope, it would be impractical to ever redevelop this lot. It would just remain vacant given definitely the location of the utility easements, and the amount of buildable space that would be left would be unworkable. I'm open for questions if there are any and I thank you for the opportunity to address the Board.

ROBERT SPRINGER: I have a question. How soon is the dilapidated building going to disappear?

MR. SMITH: Well, our -- my client is under contract with a potential end-user, as we said before, Mavis Tire. If we're able to get our approvals, construction will start immediately. It is my understanding that they're interested in building this building and getting it open as soon as possible. I presume -- this calendar year -- this calendar year we could see that new building up.

ROBERT SPRINGER: Are we talking 60 days, 90 days, 120 days?

MR. SMITH: I don't know if we have a demolition schedule yet until we get our approvals, but we'll move quickly because we have -- we have -- our client, the owner of the property is under a contract with deadlines, and, um, with the end-user, and our -- you know, it is in our interest to move quickly.

ROBERT SPRINGER: Assuming you get all of the approvals that you require, we wouldn't see that building sitting there by October 1st? Correct?

MR. FALLONE: Correct.

MR. SMITH: Correct.

ROBERT SPRINGER: Okay.

PAUL BLOSER: You asked.

MICHAEL NYHAN: This building, the way you have laid it out, have you given any consideration of moving the storage area which is in the back and the showroom to the front so that the two bay doors would be moved back and out of sight from Chili Avenue as you drive down Chili Avenue? Instead have windows on that side so that building in the front and that side would be visible from the road with them both looking the same.

MR. SMITH: As I mentioned, this building has been reconfigured before the -- the Planning Board process actually more than once. We went through three or four iterations before we got something that was both workable from an internal flow point of view in terms of operations and acceptable to the Planning Board. Um, this configuration, like I said, is the -- is the third or fourth to -- to -- in order to get there. Um --

PAUL BLOSER: Well, just to jump in, we do -- Planning Board gave their full approvals. Architectural Review has signed off and everything. We're pretty much the last -- last thing required. So they -- so they have been through the mill on this one. They -- they have done everything that the Town has asked so far on this. It has been a long project.

MICHAEL NYHAN: Has that been asked?

MR. SMITH: Where, the storage?

PAUL BLOSER: It was reviewed.

MICHAEL NYHAN: Was reviewed.

PAUL BLOSER: It was reviewed with Architectural and Planning.

MR. SMITH: In using this drawing, I can give you a little more background. The reason the showroom is here (indicating) instead of here (indicating) is because initially the parking would be in the front, but because now the parking is in the back, there is a desire to, um, remove the potential hazard of having people walk by the bays, so that is why, you know, you enter through the showroom in the back room.

Ideally from our client's point of view, they wanted the showroom up front because you get

more visibility there, but, you know, in -- in conformance with the desire of the Planning Board to put this attractive facade on the front and to reduce the amount of space, we complied with that, and this is a good -- this is also a good design and workable design.

The positioning of the storage, um, as -- as in relation to the bay doors was done for workability within the store. This is not the first Mavis in terms of, you know, um -- it's a large chain, and that's -- that was the -- deemed to be, you know, the -- the best way for the store to operate safely in terms of -- in terms of having the equipment that is needed to do the work in an area that -- that would be close -- close to the bay doors.

Also, having the bay doors pushed further front is beneficial for traffic flow because people have to come around this corner here (indicating) as you can see, and the -- the -- the further you push them back, the harder it is, you know, in terms of traffic safety to -- for people -- for people to be able to see those cars coming in and out.

ROBERT SPRINGER: The storage area also produces a sound barrier for the work side versus the people sitting up front for waiting for their vehicles.

MR. SMITH: I think it is beneficial in that way, too.

ROBERT SPRINGER: Who pulls the vehicles into the -- the bay?

MR. SMITH: Um, Rob (Fitzgerald), do you have background on that?

PAUL BLOSER: Usually it's store employees for insurance liability purposes going over the racks.

MR. SMITH: That is my understanding, but my knowledge is limited to being a customer. So I don't know if you have any more background on that.

MR. FITZGERALD: Sure. Yeah. As far as staging, too, you know, people can come and drop their cars off in the morning, so yes, the clientele would -- the employees would grab the cars and drive them in, the majority of the time.

ROBERT SPRINGER: Just for common knowledge, what is this?

MR. SMITH: That -- that proposed building, the -- the tenant would be a catering company.

That is -- there is actually two lots you see there. And to show you where the line is, here is one lot line (indicating). And here is the second lot with the separate entrance. This building is, um, also going to be used to be leased and our anticipated use is a catering company.

MICHAEL NYHAN: Another question on the curb cut in front, there is an existing curb cut and I notice there will be a new curb cut into the Town & Country Restaurant?

MR. SMITH: There is an existing easement that's been -- that was in place prior to our application for site plan approval. The cross easement was a condition to previous site plan approvals on both lots. There is a desire from the Town's point of view, if possible, to consolidate, um, curb cuts through the use of cross access easements. We complied with the Planning Board's request to leave that possibility open.

At this time, the -- you know, that curb cut would stay open. If in the -- in the future it was, you know -- certain -- certain conditions are met, there is an opportunity if there could be a shared driveway with Town & Country through cross easements for that curb cut in front of the Mavis to be closed, but as -- for now it would stay open and that cross easement and that ability to go into Town & Country is -- is left open so that down the line there is still the possibility to reduce the number of entrances onto Chili Avenue.

MICHAEL NYHAN: You will have a second entrance and exit to the west in front of the second proposed building; is that correct?

MR. SMITH: That's correct.

MICHAEL NYHAN: It will service both those properties.

MR. SMITH: Yes. The parking lots will be linked. They will both -- both properties will be leased to another entity but the leases will include cross access or common area terms to allow for parking for both parcels and -- and access for both parcels through the others' curb cut.

MICHAEL NYHAN: Okay. Are there any other vehicle repairs in the building other than tires and inspections? Mechanical repairs, engine repairs?

MR. SMITH: Mavis does provide other services besides just tires, and, brake repairs, um, but the -- this is considered a quote/unquote minor repair auto under the code. It's not a major repair auto under the code which would be the more in-depth mechanical repairs that apply to engines. I can actually read to you the exact list of services if you wish.

Our original letter to the Zoning Board included a full list of the services that Mavis provides. To the Planning Board. I'm sorry if I misspoke. To the Planning Board.

MR. SMITH: The definition of minor repair auto, which is what we would be living under, um, states, "A building where minor repairs to motor vehicles are conducted such as oil changes, lubrications, tire repairs, muffler and brake repairs and replacements, tune-ups and similar operations which do not on average take more than two hours to complete."

The operations of the Mavis would fit within that definition and be limited -- limited to those types of activities.

MICHAEL NYHAN: Okay. Thank you. And then lastly, where are the used tires and oil things -- where is that stored?

MR. SMITH: Well, there is temporary storage for certain things within the store, but everything else will be off site.

MICHAEL NYHAN: So it would be enclosed in the building or moved off site?

MR. SMITH: Right. No outside storage. There will not be tires stacked outside or anything like that.

MICHAEL NYHAN: Thank you.

FRED TROTT: So there is not going to be any used tires stored outside?

MR. SMITH: No. No.

PAUL BLOSER: That was, I believe, a condition of approval from the Planning Board also that no tires be stored outside. That was a site condition.

FRED TROTT: In the side access into Town & Country Restaurant, that will be available? I mean that will be available for somebody to use once the store is up and running?

MR. SMITH: Correct.

PAUL BLOSER: Could you be more specific on that, what side entrance you're talking about?

FRED TROTT: The one going into Town & Country Restaurant.

MICHAEL JONES: Can I respond to that? This was a big discussion at the Planning Board and Planning Board required that a cross-access easement be provided, but it's not going to be immediately used. The access easement between the various property owners does require a third property owner to provide the cross access. It hasn't happened yet. It will not be an immediate thing that we see, but the Planning Board did require the option be available in the future. I don't think it's going to be constructed or in place immediately.

PAUL BLOSER: I think it was started in 2002 or something like that when -- I believe when the restaurant was being built, it was proposed at that point, but it was never 100 percent finalized.

MR. SMITH: I'm sorry. I -- I mis -- I misunderstood the question. I think I described it accurately earlier and then I misunderstood the question there.

I -- I was -- I thought you were referring to the -- I misheard. I thought you were referring to the catering curb cut. Sorry about that.

PAUL BLOSER: My understanding is the lot design, they would have to walk out the sidewalk and walk to the front entrance. There is not going to be like a side cut-through there. They would -- if they were to park their car and leave it there and walk next door to the restaurant, they would go by the sidewalk.

FRED TROTT: I'm more concerned of getting out of this facility as Colombini's is a difficult -- that was the concept behind the mall having cross access into that signal light that the restaurant has.

PAUL BLOSER: That's an issue that -- I think everybody has had along the way here. It is still being reviewed by the Planning Board. They still have another party that has to be -- they have to sign off on this, so there are legal things that are beyond this Board. Right now we're just looking at the setback.

FRED TROTT: Sure. I'm just asking the question because it shows that on the plans, that they would use it.

MR. SMITH: Just to clarify, there is a curb cut to the west by the catering, what would be used as the catering leased space and then there is a curb cut in front of the building. And to your question, there -- there is a possibility of a cross-access easement to Town & Country, but certain conditions have to be satisfied in order for us to use that.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Robert Mulcahy made a motion to close the Public Hearing portion of this application and Robert Springer seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

PAUL BLOSER: I'm excited to see something happen here. It -- this has all been signed off now. Everything has been done through Planning, so like I said we're the final step in this, for the setback portion of it.

JAMES WIESNER: So we're still at this point (indiscernible) because it's not our Board action. It was done this month, as far as getting approval by the Planning Board?

PAUL BLOSER: Yes. In June.

JAMES WIESNER: Don't have the conditions or --

PAUL BLOSER: Conditions as far as?

JAMES WIESNER: The Planning Board conditions.

PAUL BLOSER: They're all here. A whole list of them. But part of the -- anything specific you're looking for?

JAMES WIESNER: No. Just like specific type stuff, not the sign-off on the drawings and that sort of thing.

PAUL BLOSER: Fire Marshal, um, that is subject to approval and final.

But special use permit is there.

Semi-tractor trailer trucks are restricted to entering the property.

JAMES WIESNER: They can't go on the property or they have to go in the back entrance?

PAUL BLOSER: They're restricted from entering the property for pickup and delivery purposes.

Everybody signed off. The Town Engineer, Commissioner of Public Works. Landscaping. I mean it is all there.

It is just this is the only thing they need, is the final for the setback. No front parking on it. So I don't see where we have to put any conditions on this.

So, anything else?

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Robert Mulcahy seconded the motion. The Board all voted yes on the motion.

Robert Springer made a motion to approve the application with no conditions, and Robert Mulcahy seconded the motion. All Board members were in favor of the motion with the exception of Fred Trott voting no.

DECISION: Approved by a vote of 6 yes to 1 no (Fred Trott) with no conditions, and the following finding of fact was cited:

1. The requested variance is not significant in nature and will have no negative impact on neighboring properties.
5. Application of Sonbyrne Sales, Inc., owner; 171 State Route 5, Weedsport, New York 13166 for variance to allow a 36' by 1 1/2' sign on west side of canopy over pumps totaling 54 sq. ft., variance to allow sign area around bottom perimeter of canopy over fuel pumps totalling 45 sq. ft. at property located at 3771 Chili Avenue in GB zone.

This application was held until July.

6. Application of Amy Conner, owner; P.O. Box 117, North Chili, New York 14514 for variance to allow existing private animal kennel to be 17 feet from side lot line (200' required) at property located at 161 Attridge Road in R-1-15 zone.

Amy Conner and Shane Conner were present to represent the application.

MR. CONNER: How are you?

PAUL BLOSER: Good. How are you?

MR. CONNER: Shane Conner and my wife, Amy (Conner). Thank you for hearing our -- seeing us tonight.

A couple of things I guess I would like to go through, if I might. Just to -- we had a letter that was written by a local person that was on Attridge Road and I have copies if the Board would like to have a copy of that letter.

And also, just a -- also there is a set of notes there that -- in response to reasons why we felt we placed the kennel where we put it. I just wanted to have that as a matter of record for the Board, as well. There is only one copy of that there, so you don't...

PAUL BLOSER: Okay. The -- -- your lot map, how far up from your rear lot line is that kennel to start with? From the rear lot line?

MR. CONNER: Um, the enclosure, the back side of the enclosure to the back side of our property line --

PAUL BLOSER: Yes.

MR. CONNER: -- would be approximately --

PAUL BLOSER: I know they're all tapered lots there.

MR. CONNER: I'm sorry?

PAUL BLOSER: Those are all tapered lots.

MR. CONNER: It actually widens in the back.

PAUL BLOSER: To the north side?

MR. CONNER: Yes, wider in the back. 90 feet in front and 108 in the back. I will give you a guesstimate, 179 less 360 feet, whatever that number is.

PAUL BLOSER: You show a right angle of the kennel on here L-shaped. The photograph showed it more rectangular. I am questioning what that is.

MR. CONNER: Yes. The -- initially what we had planned, we have placed the 6 foot -- it's a -- it's called a 6 foot professional kennel fence and that -- that L jog you're seeing, you asked about the L part of it, would be provision for in the fall of the year adding a shed type onto that section, 14 by 9 which we would do as a second step of this.

That would be, um -- well, initially the enclosure is -- is all exposed to the outer elements, so the second stage would be to provide them -- it's called a -- it has a roof over it, gazebo 14 by 9. There are different sizes. The one I put on to show you would be 14 by 9, and that would have three lanes coming off it that are enclosed individually because the maximum dogs -- we only intend to have huskies out there which don't bark, don't bother. You can steal them; you can take them.

But we possibly would add a third husky at some point, a female. That is why we shown the three lanes there. Right now we initially only have the two, which are Zena and Nikko, and they're mates. We plan to have at least one litter a year with them as an average. They can do up to two, but our goal is one typically per year and possibly a second by a second female. Depending how things went, whether we would -- they're able to do two litters a year, but our plan would be to have two females at most, so that is why we asked for permission for up to five dogs.

Two dogs would be in the house. We have a 12-year-old dog whose name is Zoe, and we have a Border Collie we rescued from a farm. That is two, but they're inside dogs.

The huskies are on the outside, in these kennel enclosures. That is a little more detail than you asked, but there is a little more to it. The reason I -- I do have pictures of that. I can give a copy to the Board of the 14 by 9 --

MS. CONNER: Initially that is not there right now. Just the rectangle part is what is there right now.

MR. CONNER: Which is the 6 foot kennel. It's the 6 -- actually 10 by 30, but it's 6 foot in height. And we have igloo houses in there that we currently have. They're out of the elements in those, and you know, those can work, you know, for the huskies, but we would like to add, um, and be glad to go through any -- we were told under a certain size, depending on the size we would do, whether we have to go for a building permit for that, but that would be a second step to this.

And I have a copy if you would like one for the Board. I have nine of -- what that house, physical photocopy what it would look like. I would like to give that to you, as well, if you would like to have a copy of it.

PAUL BLOSER: That's for the next phase then?

MR. CONNER: Correct.

PAUL BLOSER: I would like to see it or at least put it up on the board here.

Can you put it on that?

MS. CONNER: Sure.

MR. CONNER: Now, that is a -- the length is 14 feet and comprised of three different compartments, but they have them that are -- you can have two separate runs. This is just one that we thought was adequate size, but depending what we would have to do to comply with the Town, we're flexible with that size.

I mean -- but that is one that we picked out that had a nice look to it. Huskies can be out in the elements. They can survive, you know, in subzero weather, so. I mean it would just be --

MS. CONNER: One of the reasons why we have the enclosure we have now is to keep them safe because they're known to run and jump fences easily, so what we have them in now keeps them very safe. They're not able to jump out. They're not able to tear it down. So it is keeping them safe and everyone else around.

PAUL BLOSER: And the -- the --

MR. CONNER: The other thing with that, we contacted Invisible Fence. Our home has invisible fence the whole length of our property. The back side of our house down to this part of the woods. Um, we talked to the gentleman over at Invisible Fence in Henrietta and he -- they told us that with huskies they have had trouble with them staying in, so once we didn't have that for an option, um, that's when we went to the enclosure and tried to place it in the woods where they would be in somewhat of a natural environment where they would be safe and obviously be out of the way.

PAUL BLOSER: Um, so you're looking up to five dogs?

MR. CONNER: Well, currently, we --

PAUL BLOSER: Two in the house and three in the kennels is what you're saying?

MR. CONNER: Yeah. But that -- but that third or fifth dog could be somebody bringing us a husky female that wants us to sire their female. They would be with us for a couple weeks at a time or a month and then go back to their owner. Or it could be a dog that we actually were to purchase. But --

PAUL BLOSER: What is an average litter size?

MR. CONNER: Six. Six on average.

PAUL BLOSER: They go to like eight, nine weeks before you can release them to future owners?

MR. CONNER: Yes.

PAUL BLOSER: As far as the kennel goes, I'm familiar with these lots, the four Lauterborn lots there. Too familiar, I guess, the size and the shapes of them. I know Riga, how it cuts there at the angle on the Town line right through. I don't know if it hits your yard.

MR. CONNER: It does. Riga hits the back corner.

PAUL BLOSER: It's right there. With the size of those and having dogs, I'm concerned about dog excrement.

What do you do with it?

MR. CONNER: Well, the current enclosure that we have has 6 inches of crushed stone for a floor, and every day daily that is cleaned and taken care of and it is put in a compost pile and the kennels are sprayed down.

MS. CONNER: Every day.

MR. CONNER: Done in the morning between 7 and 9, the kennels are cleaned and sprayed down. We use -- what is the stuff?

MS. CONNER: Lime.

MR. CONNER: Lime. A non -- deteriorating detergent, environmentally safe.

MS. CONNER: That goes over the excrement we take outside of the kennel. The lime goes on top of that.

PAUL BLOSER: So that is in the compost pile?

MS. CONNER: Uh-huh.

PAUL BLOSER: Where is that pile, the -- the -- where do you keep that on the property?

MR. CONNER: Um, well, we have got one that's probably within 30 feet of the kennel,

but down into the woods, um, which -- if I were to place it, it's probably 85 to 90 feet from our home, and any -- and maybe 170 feet from either home on either side.

But then there is a spot there and then we can move that around accordingly. It's -- as it gets to be big enough. But we spray the kennels down and the nice thing about the stones is it's a natural filtration system and the -- when we treat the kennel when it's done, we don't have a trouble with any odor or anything of that nature.

JAMES WIESNER: When do you plan to add this enclosure? Those trees it would appear to be in that area are pretty tight. Are you going to have to take trees down in order to make them fit or?

MR. CONNER: Actually, there is a spot in there that I -- I may have to take one. There is a 6 inch sapling there that may have to come out, but that would be it. If we had to take more than that, we would go with a smaller setting. The reason where we placed the kennel was placed between a 15 by 37 area where there was no trees, so that's the reason we placed it there and not to harm the wooded lot, because we love the trees. We get the deer in the back and we wanted to keep a natural environment. So we would give consideration to a smaller one if more than a tree had to come out.

MS. CONNER: The nice thing where it is now, it's really hidden well in the trees where it is not right in our backyard where it looks obtrusive. It's pretty well hidden, which is nice.

FRED TROTT: When you have a litter of say six puppies, what happens if you don't get rid of one of the puppies?

MR. CONNER: We have a pretty good connection with a breeder in Missouri who has over 100 breeds of dogs and their biggest breeds are the huskies. They have got several connections for us to network with to move all of the huskies.

MS. CONNER: We're not going into this blind-sided. We have a family member who is a breeder and she has instructed us on what to do, plus like he said, all kinds of connections to help us be able to sell our puppies. So we don't see any trouble with that at all.

FRED TROTT: No other questions.

JAMES WIESNER: Are there any limits in Chili as far as the quantity of dogs on any particular property?

PAUL BLOSER: Two?

JAMES WIESNER: Two. So that is why they have to apply for the private kennel from the Planning Board?

PAUL BLOSER: They would have to apply for a special use permit for that, and we're getting it first because it would have to come back to us for zoning approval for the setbacks because there is no place to put it, I mean, with -- you know, you look at the setback requirements, what is it 200 foot? For a kennel?

JAMES WIESNER: So a kennel is required for the quantity of dogs.

PAUL BLOSER: Yes. Yes. And this is an outdoor breed. There -- this is not a dog that you would keep in the house all of the time, because they live in any environment and they thrive on it.

You know, and one of the concerns I have with this particular breed is they don't bark as much as they do -- I don't know if they call it a moaning or a whining at night, a howling type noise. And I'm concerned getting them in -- in this area, and I lived a couple properties away from you for a while. So I'm very familiar with on the same side of the road the wildlife back there. And there are a lot of coyotes still in this Chili area. And they -- they're territorial and so are these dogs, protective of their environment, and I'm concerned with getting numerous of them, that there is going to be a lot of this howling. Especially if you're bringing in one for mating, it could be a sleepless two weeks for neighbors.

MS. CONNER: The nice thing is about where our bedroom is at nighttime, it's directly across from where we can see the kennel. So even every once in a while if we hear one bark at night which is very, very -- happens very infrequently, you know, we are right there. And we have not heard hardly any howling from them, which is a good thing. So -- so far we have not experienced that.

MR. CONNER: And with respect to that, you know, we wouldn't have huskies if they were nuisances. We wouldn't keep them. We wouldn't walk into this with getting -- knowing they were that type of breed. We don't want -- we're -- we have, you know, a dog at the house. She is 11 years old. She is a mix, you know, but she barks.

All our neighbors love her, because we have neighbors that her husband is a Sheriff at night. She is gone. She barks if somebody weird comes by and they appreciate that because she is home by herself. But outside barking or being a nuisance, we wouldn't allow it because we don't want to disturb any of the neighbors and we think that would be inconsiderate. But there are breeds you don't want. We don't want Chihuahuas.

We're not taking other dogs in. This is a private kennel, very controlled environment. These dogs are also house-trained. Our huskies are not just out there in the wild. They -- they get walked every day. They need to exercise, and they need to be -- so we -- so we have our teenagers tend to them, walk with them and do things so they're not just left out there. We don't tolerate any of that. If they bark, if the dogs bark, it has been because our cat comes up and the cat teases the husky and walks around the kennel. We have a kitten that likes to, you know --

PAUL BLOSER: I'm familiar with that.

FRED TROTT: I have a question. Just because you kind of pointed it out to me.

We're giving approval, and say, for example, Pit Bulls become popular to breed in a kennel. We have given them approval for a kennel. We have not given them approval for the

kind of dog they have.

PAUL BLOSER: Correct.

ADAM CUMMINGS: To expand on that, they could still get declined for special use permit at the Planning Board and we still granted them a variance of 17 feet off -- well, never mind. They wouldn't get a private kennel. Never mind.

JAMES WIESNER: It would be conditioned on Planning Board approval.

ADAM CUMMINGS: Right. We would have to put a condition --

PAUL BLOSER: The Planning Board would have to look at the other issues as far as limits and -- and issues tied with that. But without a setback, it's -- it's --

FRED TROTT: We're only looking at setback. We're not looking at it as a private kennel concept.

PAUL BLOSER: Right. But I mean, you do have to take into consideration what it is. It is not like a setback issue for a shed.

FRED TROTT: My next question is, are we approving --

PAUL BLOSER: No.

FRED TROTT: Would they have to come back for that?

PAUL BLOSER: They would have to come back -- well, no, because we're giving them structure setback for 17 foot, so they would only need a building permit for that.

ADAM CUMMINGS: Right.

PAUL BLOSER: Unless they go over the --

ADAM CUMMINGS: Square footage or closer.

FRED TROTT: Square footage or something like that, if they have another building on the property.

MR. CONNER: Just in respect to this conversation, if I might add, we don't plan to add any other -- the huskies would be the only breed out there, and --

FRED TROTT: I understand that.

MR. CONNER: I understand somebody else --

FRED TROTT: If you sell the property 75 years from now and somebody wants to raise Pit Bulls or Chihuahuas.

MR. CONNER: We won't mind if you wanted to stipulate we will take the kennel down when we go.

PAUL BLOSER: We can't. Doesn't make a difference because you issue it, it stays with the property. Even if you tore it out, the new owner could come and say there is an open variance to put a kennel on it and they could as long as they have met the requirements that we set forth. So we have to be cautious how we approve things because it really does affect, you know, what goes on 10 years, 20 years, 50 years on that site. So it's a long time.

MR. CONNER: The other thing is with respect to the variance, you know, one thing we looked at, too, was, you know, doing this whole application process, the -- the -- the Lauterborn Subdivision, those lots are what they are and that is one of the toughest parts about trying to find a place to put it and/or not -- not place it.

MICHAEL JONES: Nothing.

PAUL BLOSER: Couple quick questions.

There -- the four dogs you have now, permits on those?

MR. CONNER: Yes.

PAUL BLOSER: You have those. They're all licensed through the Town?

MR. CONNER: Yep.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

MR. CONNER: Well, right along, we -- we -- you said right along. They haven't been -- we licensed the Border Collie and the two dogs as pure bred -- got pure breed licenses in -- April is when they were licensed. So we thought you had a year with the puppies. You had five months. So we overlooked that and in April I started putting up the information about going to the Town and doing that and there was a complaint waged by Mr. and Mrs. Kasper regarding more than two dogs. And as I -- so that's the other part of that, that we were concerned about.

We did approach the Kaspers and talked to them after the complaint was filed. We did talk to them about some alternatives and they said that they didn't have any -- that they just didn't want to look at the enclosure, and I do want to be noted that over the course of seven years we have lived there, we almost didn't buy the house seven years ago because there were multiple signs on the home after it was built saying there is a radioactive dump site, nuclear waste, by Mr. Kasper.

MS. CONNER: Surveillance cameras.

MR. CONNER: Surveillance cameras on premises. The realtor had to call and get the signs moved back to their yard. We went three times to look at this property and almost didn't buy it. I never realized -- I went and talked to Billy (Kasper), and I just want this to be -- it is okay if I went to talk to him and tried to say, "I apologize I didn't let you know we were putting it out there."

And we came to the realization that even if I had talked to him, he still would have made a complaint, that he still wouldn't have been happy.

PAUL BLOSER: Well, that is kind of irrelevant to this. We won't get into neighbor issues. It's not a -- I think it's irrelevant to what we're doing here.

MR. CONNER: I just wanted to make that part of the record.

PAUL BLOSER: I appreciate that.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

LINDA AND WILLIAM KASPER, 155 Attridge Road

MS. KASPER: Linda and Bill Kasper. We're the Complainants originally

PAUL BLOSER: I would ask if you could step up. I'm hard of hearing.

DAVID LINDSAY: I'm Linda Kasper. This is my husband, William. We live at 155 Attridge Road. We are the original Complainants. We came home on a Thursday and magically there was a 30 by 10 foot 6 high kennel in our direct view from every rear window.

I would like to give you handouts. So if I can just give you -- this lists our objections. We have been living here for 25 years happily. It also gives pictures. You had mentioned the trees. None of these trees are evergreen. They are our trees. They can be damaged by wind. They can be damaged by weather and the leaves fall off. Which is why we have such a good open view of a kennel.

Which, as I just learned, is definitely for profit and breeding, so what they have just said is they are going to have a business in my backyard. Yes, the dogs do howl. I have looked up the breed. Yes, they shed.

I have multiple objections. You will see a letter attached stating -- from a very reputable million dollar real estate agent -- this will decrease my property value.

I don't honestly see a reason to grant this. My list of objections is there. I have not seen wildlife since the kennel went up. I have always enjoyed deer. Goofy, ugly turkeys, they love to come out in the sun. I have not seen one.

So I looked up the breed. It's a predator breed, according to AKC and about 30 other references if you're interested. So that took care of the wildlife I have enjoyed for 25 years.

I have a dog who is taunted by the kennel. It watches these animals. Now you're telling me there are feces and lime which is going to get a more parasitic environment for my pet who has been licensed. I didn't know at the time I made the complaint that their dogs had for six years never been licensed.

At the time I made the complaint, I did not know about the 200 foot setback.

All I knew is it broke my heart to come home and see a kennel. I have a back deck I grill on. It looks at a kennel. Huskies, odor, insects, all of the things that take away my ability to appreciate my backyard.

I have pictures of parties we have had over the years. I have a walk-out basement. Picnic tables and things are all set up in the backyard directly in view of a kennel. I have nieces that are afraid of the dogs. Which we can all -- there was already one in heat because she asked what they were doing. In direct view. I'm sorry. I don't mean to be sarcastic. I'm very emotional right now. I did not know I was going to have a business next door. And this, everything is over 6 feet. If it was a stockade fence, you would need a variance.

And now what he is going to put up is going to come towards my bedroom more. It will be 70 feet from my bedroom window. You have to be 70 feet off the road. I don't understand why this would even be an option. I'm sorry. Take a minute to read it. It will be easier. I don't mean to sound irate. I apologize.

ADAM CUMMINGS: Did they say how tall is the fence?

PAUL BLOSER: 6 foot fence; is that correct?

MS. CONNER: Yes.

ADAM CUMMINGS: We can't do anything about that.

Multiple side conversations were had by the Committee members.

PAUL BLOSER: Just that was a discussion we had two comments here behind the Board that just so -- so you know what we're talking about here, I was talking to Adam (Cummings) that, you know, you would be going to Planning Board for a -- for approved use to operate a kennel.

But my understanding is they would have to come back here to run a business out of the home; is that correct?

MICHAEL JONES: That's a good question. The side table, we were just talking. There is a definition in the zoning code 500.101 for a commercial animal kennel which would seem to apply here, so it does make a distinction as opposed to a private kennel. And commercial kennel does include breeding. So it would almost appear that they would need a variance from that, although it is hard to understand what the restriction is here. It defines it as commercial but they're trying to classify it as a private.

PAUL BLOSER: That is something we're going to have to look into.

MICHAEL JONES: It's a legal issue because I was unaware of the breeding issue until tonight myself.

MR. CONNER: I believe that refers to the amount of dogs you have in the litter. One is commercial. One is private. Less than 24 dogs a year --

MICHAEL JONES: On the lot, three or more domesticated animals.

PAUL BLOSER: What we were discussing was the run of a business out of a home. There is a -- there is a permit required for that, a special -- a variance required for that actually. So you might be back here. We'll have to get that clarified later, but that will be a separate application.

MR. CONNER: Okay.

PAUL BLOSER: And Bob (Springer), we were discussing the Kaspers' presentation here. You know, wouldn't this be more relevant to Planning Board? This actually would be relevant to both Boards. So in the event that this does go through tonight, it's approved, my recommendation would be that you also appear at Planning Board for this.

So -- but tonight we'll decide where that is going.

MS. KASPER: I'm sorry I sounded so emotional.

Did anyone have any questions for me?

PAUL BLOSER: Not yet, but I just wanted to clarify what was going on behind here in case you couldn't hear us, just for the record.

I am reading the statement from Remax Realtors on their letterhead on the effect on the property value. Both for neighboring properties it could have an effect. If a neighbor was going to sell, it could have a negative impact on that. It's noted -- it's by an independent.

Any other questions the Board would want to ask the Kaspers on this?

ADAM CUMMINGS: We haven't closed public comment.

PAUL BLOSER: Right. While they're up if you had any questions for them. They're pretty thorough in what they have got here.

The Board is satisfied for right now.

BRIAN NATALIE:

MR. NATALIE: My name is Brian Natalie and I live on the other side of the Conners. Um, I don't have the tape measures and all that stuff. I'm just here to back up what they say.

I see the kids go out every day and hose down, they do the stuff every single day.

I haven't seen the dogs. They don't bark all of the time. Nothing. I don't hear them. That's it. I'm just saying what I can see.

Now that the trees are out, I can barely see the kennel. I can see what they're saying about having it right outside their backyard, but I'm right here and that is all I can -- I'm just supporting what they're telling you. They're not just making it up. I know they put a lot of effort into what they have to do and they have their own situation.

I will not get involved in neighbor arguments, but I'm just letting you know that is what I see. That's what I hear.

Thank you, guys.

DOROTHY BORGUS, 31 Stuart Road

MS. BORGUS: I can speak with a little knowledge about these dogs because my daughter had one. They howl. I don't care whether you call it a howl, a moan or whatever. And I -- I can't imagine what they're like if you have this many in heat and if you're going to be in a breeding business.

The other thing that was -- that I don't know if you know is that if you have never had any of these dogs, they have a multi-level coat which is what keeps them insulated and why they can stand the incredibly cold temperatures. They shed. And all I can think of with dog hair -- they shed so much it's like -- what is the tree that loses the --

FRED TROTT: Cotton wood.

PAUL BLOSER: In the spring, cotton wood trees.

MS. BORGUS: It's no different. In my -- my daughter had one very, very, very large dog. I can't imagine if you had lots of them. What are you going to do with this hair? It just flies. You're going to have a mess.

Um, I'm -- I'm a little confused about the size. Is that -- is the whole kennel to be 14 by 9 or is that in addition to the 10 by 30?

PAUL BLOSER: My understanding was it is in addition to the 10 by 30.

MS. BORGUS: You're talking about 426 square feet of kennel.

PAUL BLOSER: And at that point because it's a structure, I don't know --

MS. BORGUS: It's not -- I know. This is not your purview. This is Planning Board.

Which is my next point. Why is this here first? It should have gone to Planning first. I have -- I make this comment.

PAUL BLOSER: I will stop you right there, Dorothy (Borgus), because I discussed this with Jim Martin and --

MS. BORGUS: Who is the Chairman of the Planning Board.

PAUL BLOSER: Jim Martin is Chairman of the Planning Board.

And them doing anything is really contingent on this, a setback. Because there is no other place to put it on the lot. If they don't get a setback, they don't have a kennel. So we decided between the two of us, that we'll hear it first, and then I don't know if they're on the schedule for July's meeting or not for Planning, but they would hear it pending what our outcome is.

MS. BORGUS: How are you going to put that anywhere on their lot and have it be anywhere near legal per our code if the lot is only 108 feet wide?

PAUL BLOSER: Well, again we're looking at 17 foot setback is the request. The code says 200.

MS. BORGUS: Right.

PAUL BLOSER: We're looking at -- we're using the same criteria, what is the impact going to be on the neighborhood.

MS. BORGUS: Sounds like it's major.

PAUL BLOSER: Well, if we throw out the numbers like he did percentages --

ADAM CUMMINGS: It's --

PAUL BLOSER: -- it is a fairly significant request.

So -- so, Dorothy (Borgus), you have been here long enough. We know that that's something that we're going to consider when we vote, is those five items, where it stands.

MS. BORGUS: The best -- if your lot is 108 foot wide, the best you can do is 54 feet, the middle.

PAUL BLOSER: The code is 200 foot.

MS. BORGUS: I know. And the best you can do, in the middle of the lot, is 54 feet each way. That's a huge shortfall.

PAUL BLOSER: Yes.

MS. BORGUS: Huge.

And as far as the trees go, I saw the pictures. Um, but trees don't have leaves all year long. Now you got bare trees. I mean, there's -- there's not much to shield it when there's no leaves on the trees.

Um, it's too bad that when people want to do this, they don't go another ten miles west and go to a Town where this is not such a problem. It's a problem where they're trying to do it.

If I sat on that Board, I know what my vote would be because there is no way that this isn't just such an impact that it's beyond consideration.

Thank you.

MR. CONNER: Just a couple of things. With retrospect to -- what is your name? Dorothy (Borgus)?

MS. BORGUS: Yes.

MR. CONNER: With Dorothy (Borgus) and the comment regarding the size of the dogs, these dogs are 35 to 40 pounds.

PAUL BLOSER: It's a medium breed.

MR. CONNER: They're not a large dog. They're 35 -- the males may get 45. They're not Malamutes. They're not -- they're not going over the fence.

The other thing I want to bring to your attention is Mr. and Mrs. Kasper fed the turkeys for seven years.

They stopped feeding them a year ago. I haven't seen them either. They stopped coming long before we even had the huskies. The other thing is we had about ten deer out back the another night because I went outside and they startled me. I walked out to lock the kennel and there were 8 to 10 deer that took off within 5 feet of the kennel.

So predatory or not, um, that's -- that's just some experiences that we have had.

With regard to -- I just would like to sum up this, if I might, before you close. With regard to where we place the kennel, um, we -- we put that out there where we thought it was less impact on everybody.

Um, the Thursday that we put it up was the only day my son had a free day. It was during spring break. Billy (Kasper) thought I threw it out just to deceive him. My son worked and he had that one day off.

I had a spinal fusion three years ago. I underwent a couple surgeries since then and have been unable to do some of that tasking work, so I needed my son to put it up and -- with his friends. That is why. It wasn't to try to pull anything on them.

As a matter of fact, they were aware the kennel was at the house. We had a 10 by 10 under the deck when we had puppies and Billy (Kasper) said it was fine there just until we moved it out where it is. Billy (Kasper) doesn't care about -- said he doesn't care about the dogs, doesn't bother him. He cares about looking at the kennel.

When the trees fall in the wintertime and the trees are down, you can see right through that -- those panels right into the woods and where -- like I said, we're open to this -- this portion of the kennel is the enclosed runs. If -- if the Board felt that they -- the one or both were not acceptable, then we would be flexible in an -- I will spend five grand and put that out there and take down the \$2,000 enclosure if that appeases the Board and appeases them. We're flexible that way.

This tonight is about the offset which is 17 feet from his boundary line. It's not about differences of who said what. I mean, it just gets that way, I guess, because that is what happens, but with respect to can the benefit sought by the applicant be achieved by other feasible means? No. Due to the grade and the slope of the property, we didn't see where we could put it because the slope out back is a pretty good drop.

Will the granted variance produce an undesirable change in the character of the neighborhood? Um, the structure itself we put up is temporary, it's not concrete, not permanently down. So in my mind it doesn't change the -- the testament of the neighborhood, the character.

As far as where we have put it, it's very much in the woods. You can't see it from the road. You can't see it from Jerry's house which is two houses down. You got to be in a 4-wheel drive Tonka truck to even see -- only thing you see from the road is the white igloo houses inside the kennel and you see right through the panel of the fence because it's black fencing.

So as far as the obstruction of the Kaspers' property, if you look at the map I presented to you, to the Board, um -- I think there was a copy. I will just show this to you.

Um, this is the Kaspers' house, okay? His house is on probably a 30 degree angle. His property is facing just like this (indicating) and looks right at my backyard. It was the first house that was built there, okay? And the Lauterborn Subdivision, I don't think anybody thought of that before those lots were all split up. I just happened to be the one that his house is facing.

So what I would ask with respect to this is that there is some -- I understand that when I

went and talked to the Kaspers, I said, "I will move the enclosure for you to try to make you happy."

They don't want to do anything. "I want it down."

Well that's not helping my cause, because I'm -- I'm trying to find a happy medium.

But I didn't build his house on a 30 degree angle facing somebody else's property. All those years that his kids played there and there were no houses, you know, I have allowed Billy (Kasper) to keep his son's baseball diamond right on my property. I never mowed it. I left it there all of the years. "Billy, leave it there."

Billy wanted to plant trees. They're right on my property line. He said, "I want to put in some trees."

I have got 75 or 100 foot trees now that drape over my house. I have never complained.

I don't have time for this. I don't -- life is too precious to me. I don't -- I'm okay with it. If the trees are within 6 inches of my boundary line, I don't care. I realize going to Mr. Kasper and asking his permission to do what I did, we would still be here anyways.

Um, but I just want to bring that to the Board -- to the Board's attention, his home faces, you know -- but I have taken photos from his house, from his -- from his window in his bedroom, and you can't see what -- the bottom 3 feet of the kennel from -- when it is full foliage.

In the wintertime I realize the leaves fall, but there is a lot of evergreen trees that stay. There are trees that stay all year and they don't -- the very front are Poplar and the Cottonwood falls off. So we tried to place it with consideration of hiding it the best we can.

We tried to make -- I would like the Board to know that when I bought a swing set from Billy (Kasper) five years that was a rusted swing set for 50 bucks, and I put it next to Mr. Natalie's property. It's probably on his property line. I didn't realize that.

Sorry, Mike (Natalie).

But he never complained about it. And it's -- I'm going to take it out of there. I realize how ugly it is and put that at the curb. You know.

But, you know, it's like I'm in the middle of two properties and have a neighbor that I'm trying to make happy, but I don't think I will make him happy no matter what I do.

This is about the 17 foot offset. The reason why we applied for the variance, we were in default because of the size of this lot. That's why we're here. You know, that's -- that's what I wanted to bring to the Board's attention.

So in going over some of the questions that we went through, you know, is the requested variance substantial? The variance is needed due to the lot size. It may be substantial because it borders on his property line, but I will put it in the center of my lot. I can take it down and move it and -- in less than a couple hours if that will make Mr. Kasper happy. But I still got to have a variance.

And then I got to get Mr. Natalie here to approve it, and I think he is okay with it.

But, you know, so -- yeah. Will the variance have any adverse physical environmental affects on the neighborhood or district? No. It's not a permanent fence. I mean -- now the other thing is the building we showed you, the -- that's part two, but we don't have to do that. I mean I can -- I can take the whole panel, I can put it up and it will look a lot worse. It will save me \$5,000.

The reason I wanted to put that building there is so it would look nice and it would have a shed like look to the road and hide the runs. You know, that's the reason that we were going to turn that and it had like a nice curb appeal from all of the properties. So that is why I wanted to make the Board aware of step two.

I didn't even have to talk about it. I was told by someone just wait, and -- if it is small enough, you don't have to go through the Planning Board, but I wanted to make you are aware of it because I didn't want to have come back here because that is the right thing to do, to put it up there.

So, you know, was the alleged difficulty self-created. I answered "no." Somebody at Town office told me I had to say "yes." I answered "no" because -- because the lots aren't going to allow for the 200 feet. So she was -- somebody helped her at the office -- but I would say no, it wasn't self-created because if I went and got permission and went through this, we would still need a variance because of the size of the lots. We would still need the help of the Planning Board to work through this. So I respectfully submit that and appreciate your time.

PAUL BLOSER: Thank you.

Any other public comment?

MR. KASPER: Can I reiterate some of his ramblings? As far as my trees and my house and the lots and everything?

PAUL BLOSER: Yes.

MR. KASPER: My house is more straight to the road and the lots are at an angle. The trees are on my property.

MS. KASPER: If you look at the survey, it is not a 90 degree angle at the road and the road is actually angled. It's not a direct north/south.

MR. CONNER: Maybe 20 degree angle.

MS. KASPER: Yes. We have pictures of him on our property taking pictures of his kennel, but he was doing it from our basement door. Our basement is not the living quarters and it has no windows. It is below the deck. It is on -- below an incline, so it's more obstructed. If I wanted to live in my basement, I have less of a view.

MR. KASPER: He offered to me. He told me he could move it over 5 feet.

MR. CONNER: To the rock bed. There is a rock bed there.

MS. KASPER: Even if he moves it on this gentleman's property line -- which I know you won't mind if he sits on the line over the years with approximately 15 dogs per year -- it is still under 200 feet from my house, and I mind.

PAUL BLOSER: Okay. Thank you.

MR. CONNER: One more thing I want to add, and I appreciate the Board's time, but with respect to, um, the dogs and their dog having a problem, for two years they have had Star -- however long and she has come down and sat right on the tree line and her and my dog Zoe had stare-downs for as long as Star has been out there.

So, you know, the idea that all of a sudden this kennel created -- it's really a disciplinary thing with their dog because she comes over the line on my property. I don't say anything. Just send her back over. Dogs are dogs.

They have invisible fence, but the idea that this -- the kennel created some kind of a problem with their dog is -- their dog and our dogs have had stare-downs because our dogs had invisible fence and they just look at each other.

And I apologize for that. I don't know what I can do about that.

Fred Trott made a motion to close the Public Hearing portion of this application and Adam Cummings seconded the motion. All Board members were in favor of the motion to close the Public Hearing.

The Public Hearing portion of this application was closed at this time.

MICHAEL NYHAN: Pretty substantial variance.

PAUL BLOSER: Substantial variance. I'm concerned about the kennel. And not even the breed of dog. It's a kennel. It's a significant request. It's a self-imposed, but it's a significant setback from 20 to 17. Tight neighborhood with tight lots.

That's my biggest concern is the area. It's not a shed. It's not a lean-to. It's not a garage. This is going to be a kennel, and that's -- again, we're looking at long-term. If they move, there is still an open thing for a kennel. You could have any kind of breed in there. Could be Chihuahuas.

ADAM CUMMINGS: We're not granting a kennel; we're granting setback.

PAUL BLOSER: Yes. But you have to look at what is going in there, what it is for. It's not a shed variance.

ADAM CUMMINGS: No, I agree.

PAUL BLOSER: So, you know, the kennel.

JAMES WIESNER: Is there really a distinction between private and commercial or does it open up the door for that, too?

ADAM CUMMINGS: We'll have to wait.

PAUL BLOSER: That will be the Planning Board's decision on whether it is private or commercial. You know, we're looking at, you know, it's more than two dogs. It's a kennel and it's 17 foot from the lot line. And -- it's -- that's the thing. The requirement for that is 200. For that many dogs. That's what we're looking at, that portion of it, and that really is it.

ADAM CUMMINGS: I have lost track. How wide is this lot again, 180?

MR. CONNER: 90 feet in the front but 108 in the back by 360. 108 by 360.

FRED TROTT: What is our percentage?

ADAM CUMMINGS: Even if you -- it is a 10 by 30 existing enclosure, right?

MR. CONNER: Well, it's really -- they're 10 by 10 sections, so they can be made 10 by 20, 10 by 10.

ADAM CUMMINGS: You could go lengthwise. We'll call it 10 foot wide and 30 feet long, just to keep the same enclosure, so the minimum variance that is there, would be 90 -- so you would be -- 45 feet would be the minimum.

PAUL BLOSER: Still.

ADAM CUMMINGS: Instead of 17, it is possible to go at 45.

PAUL BLOSER: 200 is the code.

ADAM CUMMINGS: Correct.

PAUL BLOSER: So it is still a significant reduction.

ADAM CUMMINGS: Correct.

PAUL BLOSER: Are there any conditions of approval that you would want to see on there? First would be contingent on Planning Board approval. Small home business permit would need to be determined for possible variance.

Dogs are all permitted and paperwork new, right?

MR. CONNER: Yes.

PAUL BLOSER: Any additional dogs brought on site to be registered and licensed so that is through the Town and approved. Just for obvious reasons.

Those are the only things I can think of for conditions.

The biggest one being contingent on Planning Board approval. Okay?

Counsel, I have one question for you. In regards to the statement they made about how they remove excrement, how they process it, do I need to put anything in here about putting lime on -- they are spreading chemicals. It's not commercial. Something we should look at, something the Board should mention? They're running a commercial, something like that, will they need licensing to be putting down any kind of chemicals?

MICHAEL JONES: Mr. Chairman, I can't tell you off the top of my head what DEC

permits they may or may not need with respect to that, but I can tell you that it is within this Board's purview to impose conditions mitigating that impact if the Board believes there is an impact. Just as you could impose vegetative screening and those kinds of things, you could certainly impose a condition on this kind of thing.

PAUL BLOSER: I will do that, that it be reviewed with the Planning Board also as part of the site plan, that suggestion.

ADAM CUMMINGS: The lime application you need to reduce the -- that's why it is there.

PAUL BLOSER: Correct. But do they have to be licensed to put any kind of chemical down?

JAMES WIESNER: Horse farms use them all of the time.

PAUL BLOSER: But once they cross commercial --

JAMES WIESNER: I think that is considered as part of the -- the kennel.

PAUL BLOSER: I'm suggesting it be reviewed by site plan so that it is done properly through the State DEC. Just in fairness, it's a tight lot, tight neighbors. Um, I just -- I think it's something in fairness that we have to look at for everybody. A lot of the things come under agriculture.

ADAM CUMMINGS: Right.

PAUL BLOSER: So it's -- it's -- it just needs to be checked out.

With those conditions, those four conditions of approval, I will move forward.

Paul Bloser made a motion to declare the Board lead agency as far as SEQR, and based on evidence and information presented at this meeting, determined the application to be a Type II action with no significant environmental impact, and Michael Nyhan seconded the motion. The Board all voted yes on the motion.

Michael Nyhan made a motion to approve the application with the following conditions, and Adam Cummings seconded the motion. The vote on the motion was 6 no to 1 yes (Robert Springer).

DECISION: Denied by a vote of 6 to 1 (Robert Springer) the above described application with the following findings of fact cited as reasons for denial:

1. The applicant seeks a variance to allow a non-conforming existing dog kennel to be 17' from the north side lot line (200' req.) With further permission request to the Planning Board for special use permit to operate a commercial dog kennel from the property for the purpose of breeding and sale of dogs.
2. The variance is 183 feet, or 91.5% greater than permitted by code. The request, therefore, is substantial.
3. There is no practical alternative to achieve the benefit sought for the placement of the kennel due to the narrow length and depth of the lot.
4. The kennel in question is new, and itself not visually displeasing; however its size and purpose is out of place with respect to neighborhood homes and lots.
5. The difficulty is entirely self created. The applicant ignored the code and constructed the kennel and purchased additional dogs (four dogs currently on property with a code limit of two) without first making a variance request. In addition, proper registration and licensing of additional dogs, as required by code, was ignored.

On the balance, the Board finds that the substantial nature of the request, and that the aesthetic and environmental impact to the neighborhood requires that the variance must be denied.

PAUL BLOSER: It's not approved and we'll send a letter out to you.

MR. CONNER: Thank you.

PAUL BLOSER: Thank you for your time.

The 5/21/13 Zoning Board minutes were approved.

The meeting was adjourned at 9:33 p.m.